Supreme Court, U.S.
FILED
SEP 30 1999
CLERK

(17)

No. 98-1161

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1999

City of Erie,

Petitioner,

v.

Pap's A.M.,

Respondent

On Writ of Certiorari to the Supreme Court of Pennsylvania

BRIEF OF THE AMERICAN ASSOCIATION FOR NUDE RECREATION *AMICUS CURIAE* IN SUPPORT OF THE RESPONDENT

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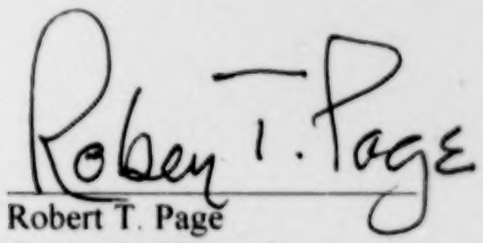
MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE.*

The American Association for Nude Recreation, a Florida not for profit corporation, respectfully moves this Honorable Court for leave, pursuant to Rule 37, to file the attached brief *amicus curiae* in support of the Respondent. Permission of the parties has been sought and counsel of record for the Petitioner, City of Erie, has respectfully declined such permission. Counsel for Respondent consented.

The interest of your *amicus* is more fully developed in that portion of our tendered brief devoted to that subject. The Association has more than fifty thousand members who are family social nudists, and a more than two hundred thirty

nudist affiliated clubs in North America, of which nine are in Pennsylvania. It is our concern that ordinances such the one at issue in this case could, because of broad, generally applicable prohibitions on public nudity, substantially interfere with the inoffensive practice of social nudism in appropriate venues. Thus, your *amicus* believes it has information and views on the issues in this case which this Court may find useful to hear.

Respectfully submitted,



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Dated September 30, 1999.

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BRIEF OF THE AMERICAN ASSOCIATION FOR NUDE RECREATION IN SUPPORT OF THI RESPONDENT

INTEREST OF THE *AMICUS CURIAE*[1]

The American Association for Nude Recreation ("AANR"), formerly known as the American Sunbathing Association, is a Florida not for profit corporation. With roots dating to 1931, the AANR has grown to an organization of more than 50,000 members in North America, consisting of people from all walks of life, in all ages, shapes and sizes. We have over two hundred and thirty clubs in the United States and Canada, and we are affiliated world wide with the International Naturist Federation, located in Antwerp, Belgium. AANR has budgeted annual revenues of in excess of one and one-half million dollars. Our professional staff at our headquarters numbers sixteen.[2] AANR and its affiliated clubs are family-oriented organizations with high standards, including the following principles reprinted on every membership card:

> We believe in the essential wholesomeness of all human bodies. We believe in the naturalness of social nudism. We consider that the exposure of the entire body to light and air

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[1] Pursuant to Sup. Ct. Rule 37.6, counsel state that they have authored this brief in its entirety and that financing thereof has been from funds available to the organization.

[2] For more information see www.aanr.com.(1999)

> is beneficial to physical and mental health. We believe that recreation - from exercise to relaxation and socialization - is enhanced by the nudist experience. We believe that we have the right to practice social nudism in appropriate settings, provided that we do not infringe on the rights of others.

Social nudism as practiced within our clubs provides a wide range of activities for people of all ages. Athletics, social recreation, and interpersonal communications promote the betterment of body and mind and strengthen family bonds.

Modern [3] social nudism generally traces its beginnings

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[3] As far back as ancient Greece, the unclothed human body has been accepted at certain times and places as both fitting and proper. In his "Life of Lycurgus," Plutarch wrote of the Spartan ruler:

> [He] ordered the maidens to exercise themselves with wrestling, running, throwing the quoit, casting the dart .... And to the end that he might take away their over-great tenderness and fear of exposure to the air, and all acquired womanishness, he ordered that the young women should go naked in the procession, as well as the young men, and dance, too, in that condition, at certain solemn feasts, singing certain songs, whilst the young men stood around seeing and hearing them. Nor was there anything shameful in this nakedness of the young women; modesty attended them and all wantonness was excluded. It taught them simplicity and care for good health, and gave them some taste for higher feelings, admitted as they were, thus, to the field of noble action and glory.

PLUTARCH, LIVES OF THE NOBLE GRECIANS AND ROMANS 59-60 (Mod. Lib. Ed. 1967).

to turn-of-the-century Germany, where *freikorperkultur* ("free body culture") parks were established with emphasis on outdoor physical conditioning, vegitarianism, and clean living. Caffeine, tobacco, and alcohol were taboo. This history, with its air of self-justification, is responsible for some jokes and misperceptions of nudists as a cult carrying on activities in semi-secret "colonies." Fortunately, this image is changing as people recognize nudism as a legitimate choice of living style or preferred adjunct to recreation.[4]

In 1980 The Naturist Society was founded in Oshkosh, Wisconsin to focus on the interest in the phenomenon of so-called free beaches and similar recreational use of public lands in secluded areas, hot springs and traditional locations long used for skinny dipping. Some of those areas, like Black's Beach in San Diego, California, have become as famous as they are popular, not unlike the growth which has occurred in the Mediterranean nudist resort playgrounds of Spain, France and the former Yugoslavia. In other locales, such as Rooster Rock State Park, Oregon, local governments have established official nude beach areas with appropriate park facilities and signs to advise the public. [5]

A Gallup poll confirms that those beliefs are in accord with mainstream America. The poll showed a seventy-two percent majority acceptance of the idea that there should be

---

[4] A thorough exposition of the history and philosophy of the nudist movement in Europe and North America is found in *Roberts v. Clement*, 252 F. Supp. 836 (E.D. Tenn. 1966).

[5] *See, e.g.*, Kellum and Lovelace, *To Bare or Not to Bare: The Constitutionality of Local Ordinances Banning Nude Sunbathing*, 20 U. Rich. L. Rev. 589 (1986).

areas for nude recreation.[6]

Social Nudism in Pennsylvania.

Nine clubs affiliated with the Association are located in Pennsylvania. Three of them are what we refer to as non-landed clubs. In other words, they do not own or control private property as in the case of most other nudist clubs. Instead, the members gather for secluded back yard functions, trips to other nudist clubs, clothing optional beaches and the like. Such clubs also rent other facilities such as health clubs and spas for the enjoyment of nude recreation, especially in the winter. In 1988, a New York nudist travel club just north of Erie rented the premises of a business in Erie, Pennsylvania known as Presque Isle Spas for hot tub parties. The Erie ordinance could clearly be used to prohibit such activity. Absent a holding that Erie's type of ordinance is unconstitutionally over broad in so far as it could reach nudists and their activities, other local governments throughout Pennsylvania could legislatively ban these legitimate recreational and social interests.

White Thorn Lodge is another of our clubs, located in

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[6] Gallup Organization, Inc., Most Americans Approve of Nude Recreation (Princeton, N.J., June, 1983). A recent *USA Today* feature noted that "A tally by the *Bay Area Guardian*, a San Francisco alternative news paper, found 185 stretches of beach along California's 840-mile coastline that are frequented by nude sunbathers, far more than any other state. The Naturist Society, which publishes a world guide to nude beaches and resorts, says that nudity happens on about 650 beaches nationwide." *USA Today Nation*, 8/27/99 (electronic edition). In a sidebar poll, the question "Would you ever go to a nude beach?" was answered "Yes, I'd go in the buff" 34.9 percent; "Yes, I'd go if clothing were optional" 32.6 percent; and "No, I'd never go to a nude beach." There were 2870 total responses.

Darlington, Pennsylvania. Each year it sponsors a tournament billed as the Superbowl of Volleyball. Top level volleyball players from around the country gather for top flight competition over the course of three days. Some play clothed, others not. Hundreds of spectators pay to see this particularly spirited form of nude entertainment.

Our Experiences with Erie-style Ordinances.

Last year, South Carolina State Representative Brad Jordan was chided in the press for introducing an anti-nudity measure so broad it would punish breast feeding mothers, diaper changers, and students in an after gym class shower with fines of as much as $1,000. The legislator was quoted as saying that he needed to pattern his bill with exactitude to conform to the teachings of *Barnes v. Glen Theatre*, 501 U.S. 560 (1991) and the Indiana law there upheld. *See* "House to Consider Nudity Bill This Week: Legislation Could Make Outlaws of Nursing Mothers" *The State* April 28, 1999 at 1. Indeed, many jurisdictions have not been as sensible as Erie, refusing to exempt nursing mothers or young children because the Indiana statute contained none. In *J&B Entertainment v. City of Jackson*, 150 F. 3d 362 (5th. Cir. 1998) the court explicitly recognized that the ordinance it there upheld would criminalize breast feeders, romping toddlers and adult businesses alike.

An examination of our experience in Florida reveals the troublesome consequences for the future of nude recreation that have come in the wake of *Barnes*. Within the past year, the Association has had to lobby against passage of at least eight new local nudity ordinances. In challenging these measures, AANR has consistently found that officials do not wish to threaten the existence of nudist activities if they can avoid, but they fear the appearance of not being even

handed.

Thus, the interest of your *amicus* arises from the very real and substantial possibility that, without clarification and limitation, laws such as the one at issue here could be used to impair our legitimate and protected activities.

SUMMARY OF ARGUMENT

I. Not all forms of nudity may be banned. In many forums, public nudity is recognized as protected expression. Ordinances such as Erie's offend the Constitution because they reach public nudity which occurs under circumstances that do not generate the kind of adverse secondary effects pivotal to the justification of restrictions on nudity upheld in *Barnes v. Glen Theatre*, whether it be legitimate theatre or nudist activities. And governments are not free to pick and choose what nudity it will recognize as protected.

II. The legitimate and protected activities of social nudists are invaded by the unlimited reach of the Erie ordinance. It contains no requirement, such as is found in Pennsylvania state law and the Model Penal Code. Nudists have liberty and privacy interests which may be constrained by the ordinances potential reach.

ARGUMENT

I. ERIE'S ORDINANCE IS SUBSTANTIALLY OVER BROAD IN THAT IT REACHES NUDE ACTIVITY WHICH PRODUCES NO ADVERSE SECONDARY EFFECTS.

Public Nudity.

It is commonly asserted that *all* public *nudity* was a crime at common law. *See, Brief of National Family Law Foundation* at 8, note 21. Such was decidedly not the case. As Professor Perkins notes:

> *Indecent exposure* of the person to public view is . . . a common law misdemeanor. Blackstone did not deal with it separately. "The last offense which I shall mention , . . . more immediately against religion and morality, and cognizable by the temporal courts, is that of open and notorious *lewdness*; either by frequenting houses of ill fame. or by some grossly scandalous and public indecency, . . .". (Citing 4 Bl. Comm. * 64-65) (emphasis in the original sources).

ROSCOE PERKINS, PERKINS ON CRIMINAL LAW 336-37 (Foundation Press, 1957). Development of English common law, for the most part, predates the development of private bathrooms and bathing appliances. Judge Posner points out that "in fact medieval people were quite casual about appearing nude in public, for example en route to the public bath." RICHARD POSNER, SEX AND REASON 357 note 12 (Harvard 1992).[7]

Lack of Secondary Effects.

This Court has recognized that not all forms of nudity may be banned, *New York v. Ferber*, 458 U.S. 747, 765, n. 18, citing *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213 (1975), and that "nudity, without more is protected expression." *Id. See also, Jenkins v. Georgia*, 418 U.S. 152 (1974); *Sunshine Book Co. v. Summerfield*, 355 U.S. 372 (1958); *Massachusetts v. Oakes*, 491 U.S. 576 (1989).

Nudist and naturist organizations face substantially similar threats from ordinances like Erie's as those articulated by theatrical arts groups. *See, Joint Appendix* 86-90; *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975). Nudist clubs and nudist activities, as with legitimate theatres, implicate none of the so-called "adverse secondary effects" so key to this Court's decision in *Barnes v. Glen Theater*, 501 U.S. 560 (1991). At least five members of the *Barnes* Court seemed to recognize that urban blight and dissolute behavior are not generated by nude performances at venues such as New York's Lincoln Center. *Id.* at 585 note 2 (Souter, J. concurring) and at 594 (White, J. dissenting).

The legislative history of Erie's ordinance shows that

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[7] *Le Roi v. Sidley*, 1 Sid. 168, 82 E. R. 1036 (1663) is often cited in support of the assertion that mere nudity was a crime at common law. In fact, the case supports the proposition, later formulated into the Model Penal Code as discussed *infra* at , that an offense required an element of intended affront or breach of good order. Mr. Sidley, in an apparent state of intoxication, appeared naked on a balcony overlooking London's busy Covent Garden; his effrontery must be presumed.

adverse secondary effects played no part in the generation of the law at hand, as opposed to a previously contemplated zoning ordinance. Rather, it is based on the moral revulsion of a majority of the voting body. *See* Joint Appendix 36-48. In *Triplette Grille, Inc. v. City of Akron*, 40 F. 3d 129,135-36 (6th Cir. 1994) the court held that "because the City failed to demonstrate a link between *nudity in non-adult entertainment* we do agree with the district court that the Akron ordinance must be struck down as facially unconstitutional under the First Amendment doctrine." (emphasis added). Substantially the same defects are present in the Erie ordinance.

This Court's decision in *Barnes v. Glen Theatre, supra* has led directly to a flurry of new local ordinances and state statutory proposals similar, in effect, to the Erie law. Many of them explicitly recite that the authority they claim is supplied by *Barnes*. *See, e.g., Brief of the American Liberties Institute et al., Amicus Curiae* at 1; ORANGE COUNTY PUBLIC NUDITY ORDINANCE, Sec. 26-26 appended to its *Brief, Amicus Curiae* at A-1,2. *Barnes* has thus invited regulators to depart from the traditional formulation recommended by the Model Penal Code discussed *infra* at 15. This has led to confusion, as well as extended litigation (*See, Brief of Orange County, supra* at 1) because of the overbreadth caused by implicating interests which governments previously had no business regulating. *E.g., Bledsoe v. City of Jacksonville Beach*, 20 F. Supp. 2d 1317 (M.D. Fla. 1998) (invalidating permit scheme which limited public events at city facilities to those promoting "family values.").

In fact, nudist clubs and recreation facilities generate positive economic effects.

> Some municipalities have discovered that tolerance of nudism can be highly profitable. There was considerable resistance on the part

> of merchants and the Mayor's Office in Miami to allowing nude bathing on its now famous Haulover Beach. Once it was opened for such use, a veritable flood of European tourists prove to be an economic boom. Florida-based cruise ship lines, formerly unreceptive to nudist organizations, now solicit their business, and it is possible to sign on for a Caribbean cruise with hundreds of other nudists.

Layng, "Confronting the Public Nudity Taboo," *USA Today Magazine/ March 1998* 24, 27. *See also*, Pilla, "Battle Over Beach Nudity May Hurt State Tourism," *Wall Street Journal*, July 19, 1995 (reprint) noting that Ft. Lauderdale, Florida considers the availability of nude recreation to be one of the top five factors in attracting international convention business.

Overbreadth.

To allow a governing authority to follow a "good taste"guide to when or whether it will enforce a nudity ban raises the chilling effects on speech that this Court and the First Amendment does not permit, and it dramatically illustrates its overbreadth. *Freedman v. Maryland*, 380 U.S. 51 (1965); *Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992). As the theatre interests in the instant case informed the trial court:

> We appreciate the City's position that it does not intend to enforce the ordinance against the arts community. However; the current administration's promises are not binding on future administrations. As long as the ordinance is on the books and can be enforced it will have a negative impact on the arts in Erie.

Joint Appendix 86-87.[8]

The very existence of such circumstances under ordinances such as this, as spawned by *Barnes*, shows its facial overbreadth.[9] When potentially applicable to the activities of

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[8] The trial judge also noted the dilemma.

> THE COURT: . . . [W]hat effect would this ordinance have on theater . . . productions such as Equus, Hair, O Calcutta? Under your ordinance would these things be prevented, Mr. Karle?
>
> MR. KARLE: No, they wouldn't, Your Honor.
>
> THE COURT: Why not?
>
> MR. KARLE: To the extent that the expressive activity that is contained in those productions rises to a higher level of protected expression, they would not be.
>
> THE COURT: Where does it say that in the ordinance, sir?

Id. 53.

[9] The design of these post-*Barnes*, broad-form ordinances prohibiting all nudity appears to be quite deliberate. One of the leading

social nudists, the overbreadth is real and substantial. *Roberts v. Clement, supra* 843-44. *See also, National Endowment for the Arts v. Finley*, 524 U.S. 569, at -(1998) (Souter, J. dissenting) (". . .to whatever extent NEA eligibility defines a national mainstream, the proviso will tend to create a timid aesthetic. And either way, the proviso's viewpoint discrimination will chill the expressive activity of persons not before the court." (internal quotation marks and footnote deleted).

What nudists believe is a life-affirming message of freedom and body acceptance cannot be effectively conveyed in the abstract. And a social nudist movement finds its rightful place, if not a majority one, in a society that cherishes the free competition of ideas. Prohibitions of the type found in the Erie ordinance and the Indiana statute at issue in *Barnes* cannot, in reality, be seen as content neutral and reaching only conduct, because for the message to get out, the activity must be able to exist. *Texas v. Johnson*, 491 U.S. 397 (1989); *Police Department of Chicago v. Mosley*, 408 U.S. 92

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proponents nationwide of such ordinances is the National Family Legal Foundation. *See, Brief of the National Family Law Foundation, supra* at 1. In their legal materials used to advise local government officials, they state:

> Even when challenges are grounded in the First Amendment, most indecent exposure laws have been upheld. However, this is true only when the statutes or ordinances are truly content-neutral. It is crucial, therefore, that all ordinances be directed at prohibiting *all public nude conduct*, not just nude "dancing" or other nude conduct with some *expressive element*.

LEN MUNSIL and JAMES MUELLER, HOW TO LEGALLY STOP NUDE DANCING IN YOUR COMMUNITY B-11(NFLF 1995) (emphasis added).

(1972); *Griswold v Connecticut*, 381 U.S. 479 (1965). *Cf. Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984).[10]

II. ORDINANCES SUCH AS ERIE'S SUBSTANTIALLY INVADE PROTECTED LIBERTY AND PRIVACY INTERESTS OF SOCIAL NUDISTS.

Social Nudism is a Legitimate, Lawful, and Protected Activity.

Current Pennsylvania state law criminalizes public nudity only in so far as it involves the exposure of genitals or the commission of sex acts in front of a third person with the intent to arouse or gratify sexual desire and with the knowledge that the viewer may be offended thereby. PA. CONST. STAT. ANN. secs. 3127, 5503, 5901. This is a common formulation in use in most states and is a outgrowth of the statutory and common law codifications contained in the MODEL PENAL CODE. As Judge Posner and his co-author

---

[10] Posner observes:

> So nudist colonies (sic) on private property are all right, but nudists should not be permitted to parade in the public streets. . . . Indeed, the only harm is the indignation hat some members of the majority will feel at the thought that somewhere, perhaps thousands of miles away, a group of people are acting on preferences that the majority finds disgusting. POSNER, *supra* 233.

And he goes on to illustrate this majoritarian view in contemporary thought by quoting from ROBERT BORK, THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW 123 (1989) "No activity that society thinks is immoral is victimless. Knowledge that an activity is taking place is a harm to those who find it profoundly immoral." *Id.* note 23.

explain:

> The Model Penal Code clarifies the traditional public indecency statutes in (that) it requires that the exposure be for the purpose of arousing or gratifying the offender's sexual desire or the or the sexual desire of someone else. This provision seeks to separate nude sunbathing and prank activity such as streaking from acts of sexual aggression, prohibiting only the latter. Many states have adopted this aspect of the Model Penal Code, leaving the question of nude sunbathing to local ordinances that prohibit disorderly conduct. RICHARD POSNER and KATHERYN SILBAUGH, GUIDE to AMERICA'S SEX LAWS 83 (U. Chicago 1996).

But it is also recognized that nude sunbathing, in appropriate conditions, is not disorderly conduct either. *United States v. A Naked Person*, 841 F. Supp. 1153 (M.D. Fla. 1993); *In re Smith*, 7 Cal. 3d 362, 497 P.2d 807 (1972); *People v. Gilbert*, 72 Misc. 2d 795, 339 N.Y.S. 2d 743 (Cr. Ct. 1973).

Erie's nudity ban may be aimed at striptease clubs. But in effectively curtailing the legitimate and fully legal activities of social nudists in Erie, now or in the future, it sweeps far too wide. The activities of social nudists are not anything resembling the erotic performances of strip tease dancers. Fundamental liberty interests are at stake here. Two federal court cases are particularly instructive.

In *Roberts v. Clement*, 252 F. Supp. 835 (E. D. Tenn. 1966) a three judge court, after extensively tracing the development of social nudism in Europe and North America,

held unconstitutional under the Fourteenth Amendment's due process guarantees a statutory effort by the State of Tennessee to ban nudist practices.

> Defendants (Tennessee) say that the statute was passed under the police power . . . and that the words in it should be given their natural and ordinary meaning. But it cannot be said with certainty whether persons of one sex taking sun baths in the nude in isolated places is prohibited. The question of whether a man and his wife can take a sun bath in the nude in an enclosure hidden from the public without violating the Act is in doubt. Restriction on nudist practices and the operation of nudist colonies as to time and place is unlimited.
>
> A statute that contains a criminal sanction that is so unclear and indefinite as to make it uncertain in meaning does not meet the due process test contained in the Fourteenth Amendment to the Federal Constitution. *Id.* at 843.

In *Bruns v. Pomerleau*, 319 F. Supp. 58 (D. Md. 1970) the court held that an applicant for a position with the Baltimore Police Department rights of freedom of association were violated by the rejection of his application based solely on the fact that he was a nudist, there being no nexus between his activities and a paramount government interest. After an extensive and reasoned elaboration of the state's admittedly great power and latitude in areas of public employment, especially those involving public safety, the court went on to find that:

> This court has uniformly held that nudism *per se* is not immoral or obscene (Citing nudist

> magazine cases).... Nudism may be unappealing and unattractive to some people. It may be repulsive and vulgar to others. But that does not limit its right to constitutional protection. Whether or not it appeals to or repels an individual's sensibilities is irrelevant when a court is bound to apply First Amendment rights which do not incorporate such subjective standards.
>
> Plaintiff's activities at Pine Tree Associates (a nudist club) in no way intrudes upon the public's sensibilities. He is a member of a group whose activities are neither illegal nor immoral and which are carried on unobtrusively. The group has a good reputation in this community. The record reveals the plaintiff's behavior to be above reproach in his employment and in his neighborhood.
>
> To condition one's employment upon the relinquishment of his constitutional right is an unwarranted and illegal intrusion upon that fundamental right that will serve as a "chilling effect" upon the exercise of other rights as well as a deterrent upon others in exercising this same right. *Cf. Dombrowski v. Pfister*, 380 U.S. 479, 85 S. Ct. 1116, 14 L. Ed.2d 22 (1965). The reprisal here of forbidding employment to the plaintiff because he is a nudist will have the effect of stifling others from undertaking the valid exercise of this right. An individual will be hesitant in practicing nudism once he is aware that the avenue of employment as a member of the Baltimore City Police Department is closed. As

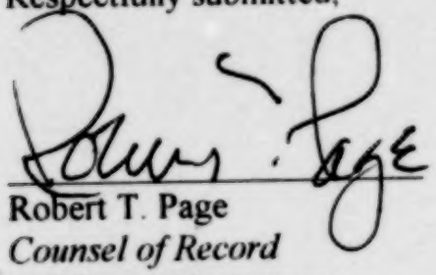
> defendant Pomerleau testified, no nudist would be hired on the police force. Such an arbitrary exclusion is inconsistent with Constitutional guarantees. *Id.* at 67.

While rejecting the nudist plaintiffs' challenge to an anti-nudity regulation at the Cape Cod National Seashore, the court in *Williams v. Hathaway*, 400 F. Supp. 122 (D Mass. 1975 *aff'd sub nom. Williams v. Kleppe*, 539 F. 2d 803 (1st. Cir. 1976) did recognize that they enjoyed a protected associational interest in the practice of social or recreational nudism. *See also, Sierra Club v. Morton*, 405 U.S. 727 (1972); *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985). This Court has consistently recognized that so long as no breach of the peace or subversive, discriminatory or otherwise illegal activity is carried out, the assembly clause protects the rights of associations to free and private exercise of their rights under the First Amendment as well as less specified penumbrae of the Constitution. *NAACP v. Alabama, 357 U.S. 449 (1958); Gibson v. Florida Legislative Com[illegible]*, 372 U.S. 539 (1963). *See also, Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Nudists enjoy such protected rights as well. *Bruns v. Pomerleau, supra*.

CONCLUSION

Your *amicus* submits that affirming the judgment of the Supreme Court of Pennsylvania this Court would cure the overbreadth problems which have arisen from the reading of *Barnes v. Glen Theatre, supra* and thereby protect the liberty interests thousands of citizens have in a form of public nudity far removed from barroom-style adult entertainment.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Robert T. Page, counsel of record for *Amicus Curiae* American Association for Nude Recreation, pursuant to the Rules of this Court, do hereby certify that I have caused to be served on the following persons at the addresses listed, three copies of the forgoing brief, by common carrier delivery on the 30th day of September, 1999.

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